

### **Reporting Requirements**

With respect to the Residential Section, as soon as practicable after the end of each fiscal year of the Condominium, and in any event within one hundred and fifty (150) days thereafter, Tenant shall furnish, or caused to be furnished, to Landlord the annual financial report of the Condominium which is submitted by the Condominium Board to Unit Owners. Upon Landlord's request, if at any time Tenant shall furnish to any Mortgagee operating statements or financial reports in addition to those to be furnished by Tenant to Landlord (specifically the annual financial statements) Tenant shall promptly furnish to Landlord copies of all such additional operating statements and financial reports.

### **Miscellaneous**

If real estate taxes are levied by The City of New York against the Units, payment by the Unit Owners shall be credited against the next payments of PILOT.

All notices required to be given to Tenant by Landlord may be addressed to the Condominium Board on behalf of all Unit Owners, except any notice relating solely to a Unit Owner must be addressed to the relevant Unit Owner and its Mortgagee, if any.

Subsequent to the date of the First Closing, the Condominium Board shall be obligated to indemnify the Landlord, and the State of New York and its agents, directors, officers and employees against all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses including engineers, architects and reasonable attorney's fees and disbursements that arise out of those matters set forth in the Lease except to the extent that the same shall have been caused by the negligence or wrongful act of Landlord, its agents, directors, officers and employees, provided each Unit Owner shall pay such Unit Owner's proportionate share of the liabilities that so arise and only as such liabilities pertain to the Common Elements.

### **Amendment to Declaration and By-Laws**

Under the terms of the Lease, any amendment, modification or supplement to the Offering Plan, the Unit Deed and the Unit Mortgage Subordination and Recognition Agreement and the Declaration and By-Laws is subject to the prior review by Landlord, which review is limited to determining, in Landlord's reasonable opinion, whether or not such amendment conforms to the terms of the Lease and does not differ from the Declaration and By-Laws included in the Plan, as same may be amended from time to time, in a manner that is materially adverse to any rights, interests or obligations of Landlord under the Lease.

### **General**

Sponsor shall pay all Rent due prior to the date of the First Closing. The Lease shall be in full force and effect on the date of the First Closing and no Event of Default shall have occurred and be continuing under the Lease.

At the expiration of the term of the Lease, the Condominium Board on behalf of the Unit Owners will be required, in order for Unit Owners to retain the leasehold interests in their Units, to negotiate an extension or new lease with whomever owns fee title to the Land and Building or the landlord under the Master Lease, as the case may be, at such time.

If the Condominium Board is unable to negotiate, or if for any reason the fee owner or the landlord under the Master Lease, as the case may be, refuses to grant an extension or new lease on favorable terms, the Unit Owners will be required at such time to surrender possession of the Units and the Property in good order, condition and repair, reasonable wear and tear excepted, free and clear of all lettings, occupancies, liens and encumbrances other than those created by Landlord or expressly agreed to by Landlord. In such event, Unit Owners shall no longer have the right to possession of the Property or to remain in occupancy of their Units. Purchasers are advised that as the term of the Lease diminishes, the value of the leasehold interest diminishes. Accordingly, as the term of the Lease diminishes, it will become increasingly difficult to arrange for, or to refinance a mortgage on a Unit. Furthermore, unless an extension or new lease is negotiated, the prices of Units being resold toward the expiration of the Lease will likely be adversely affected because of the decreasing length of the term of the Lease. No representation is made or warranty given as to whether the Lease will be extended or renewed after expiration or the terms of any such extension or the right (if any) of Unit Owners to remain in occupancy thereafter.

### **Security Fund**

To secure the obligations of the Residential Unit Owners under the Lease, including Sponsor or its designee as owner of Unsold Residential Units, immediately prior to the First Closing, Sponsor shall deposit with Landlord, cash in the amount equal to \$6,633,379 (the "Security Fund Amount") which is an estimate of the Proportionate Rent due from all Residential Unit Owners for a one (1) year period as of the Determination Date (as hereinafter defined).

Under the terms of the Lease, the Security Fund Amount will be recalculated to reflect the PILOT due based upon the actual aggregate assessment of each Residential Unit as of the date a temporary certificate of occupancy has issued for all of the Units and such Units have been separately assessed (the "Determination Date"). The Security Fund Amount and any interest or income earned thereon are referred to herein as the "Security Fund." In the event that the actual assessments of the Residential Units as of the Determination Date are higher than originally estimated, the Condominium Board will be required to deposit the shortfall into the Security Fund within one hundred twenty (120) days after notice of such calculation is given by Landlord to the Condominium Board. In such event the Condominium Board may be required to assess Residential Unit Owners. In the event that the actual aggregate assessments of the Residential Units as of the

Determination Date are lower than originally estimated, Landlord will credit the excess to the Condominium Board for the following year's assessment. Landlord does not guarantee the value of the Security Fund and the Security Fund may be uninsured.

The Security Fund shall be deposited by Landlord in a commercial bank or trust company designated by Landlord that is a member of the New York Clearing House Association (the "Condominium Depository"). All monies deposited with the Condominium Depository shall be deposited in one or more interest bearing accounts or invested by the Condominium Depository in bank certificates of deposit or United States treasury bills. Landlord is obligated to promptly notify the Condominium Board of the designation of a Condominium Depository and to cause the Condominium Depository to furnish the Condominium Board with any information it may reasonably request with respect to such deposit. Any fees of the Condominium Depository shall be paid out of the Security Fund.

Upon the purchase of each Residential Unit, the Purchaser shall be obligated to reimburse Sponsor at Closing for a portion of the Security Fund equal to the Proportionate Rent attributable to such Residential Unit for the first year of Condominium Operation.

To the extent that at any time during the term of the Lease the Security Fund Amount exceeds the sum of the annual Residential Base Rent, the annual Civic Facilities Payment payable with respect to the Residential Section, and the annual aggregate PILOT under the Lease attributable to the Residential Units, but not before the July 1 that follows the first taxable status date under Law after the later of (i) the date on which each of the Residential Units is separately assessed for tax purposes and (ii) the date of issuance of a permanent or temporary certificates of occupancy for all portions of the Building (such aggregate sum referred to as the "Maximum Fund Requirement"), the Landlord will reimburse to the Condominium Board the amount by which the Security Fund Amount then exceeds the Maximum Fund Requirement. On the expiration date of the Lease, the balance at such time of the Security Fund held by the then landlord under the Lease, shall be disbursed to the Condominium Board, along with all interest and income earned thereon, and such amount shall be distributed to the then Residential Unit Owners in proportion to their Residential Common Interests, provided, however, in the event the Condominium is continued under an extension of the Lease or a new Lease, such amount shall be retained by the Condominium and used for such purpose or purposes as may be approved by a vote of 75% of the then Unit Owners.

Landlord is permitted to draw upon the Security Fund in whole or in part in payment of the following amounts (i) Landlord's Condominium Costs which remain unpaid by any Board for a period of twenty (20) days following demand therefor, and (ii) any Residential Unit Obligation which remains unpaid for a period of one hundred and twenty (120) days. Landlord shall, within ten (10) days after any such draw on the Security Fund, notify the Condominium Board thereof. If Landlord draws on the Security Fund in payment of any of Landlord's Condominium Costs, then such amount shall be assessed against all Unit Owners and included in Proportionate Rent as part of Common Charges required to be paid to the Condominium Board and Landlord by the appropriate Unit Owners or all the Residential Unit Owners, as the case may be. If after such time that Landlord has drawn on the Security Fund, the Condominium Board reimburses Landlord for all or any portion

of the amounts withdrawn from the Security Fund, Landlord shall promptly deposit the amount of such reimbursement with the Condominium Depository for deposit in the Security Fund.

**Submission of Property to Condominium Regime**

Under the terms of the Lease, Sponsor is not permitted to record the Declaration and/or conduct the First Closing unless all of the following conditions have been satisfied (the "Condominium Conditions"):

- (i) Landlord has approved submission of the Offering Plan to the Department of Law;
- (ii) The Offering Plan has been accepted for filing by the Department of Law and a correct and complete copy of the letter issued by the Department of Law evidencing such acceptance has been delivered to Landlord;
- (iii) The Condominium Documents have not been amended, modified or supplemented unless each such amendment, modification or supplement has been determined by Landlord to conform to the provisions of the Lease;
- (iv) The Condominium Board and a Managing Agent have entered into a Management Agreement, a correct and complete copy thereof has been delivered to Landlord, the same is in full force and effect, and Landlord is a named third party beneficiary thereunder, and the Condominium Board, the Managing Agent and Landlord have executed and delivered a Management Agreement, Subordination Recognition and Attornment Agreement as set forth in the Lease;
- (v) The Condominium Plan has been declared effective in accordance with its terms and a correct and complete copy of the letter issued by the Department of Law evidencing acceptance of an amendment declaring the Condominium Plan effective has been delivered to Landlord;
- (vi) No event of default has occurred under the Lease that has not been cured;
- (vii) All construction work on the Building is complete as evidenced by a certificate from the Architect that has been delivered to Landlord, certifying that such construction has been completed in accordance with the Construction Documents, the Master Development Plan, the Design Guidelines and the Designated Proposal Requirements and that the remaining cost to effect the Completion of the Building does not exceed ten million dollars (\$10,000,000);
- (viii) A temporary or permanent Certificate of Occupancy for no less than 33% of the Residential Units (including the Unit that is the subject of the First Closing) has been issued and has not been suspended or revoked and a correct and complete copy of each such Certificate(s) of Occupancy has been delivered to Landlord;

(ix) Sponsor has caused to be deposited with Landlord the Security Fund Amount as more particularly described in this Section of the Plan under the Subsection entitled "Security Fund";

(x) Sponsor has delivered to Landlord its certification that Sponsor has satisfied the conditions to Recording the Declaration and closing of the Initial Unit Transfer as set forth in Exhibit F to the Lease;

(xi) The conditions and requirements in the Lease regarding individual Unit transfers have or will be satisfied at the First Closing as such conditions and requirements are described in the Subsection of this Section entitled "Sale and Mortgaging of Units;"

(xii) No Default or Event of Default has occurred that has not been cured upon the date of the Initial Unit Transfer; and

(xiii) In the event a mortgage is then in effect, a Unit Mortgage Subordination and Recognition Agreement for all Units encumbered by the Mortgage shall have been executed, acknowledged and delivered by the Mortgagee under the Mortgage, to the Owner of the Units, the Board of Managers of the Condominium and Landlord.

The foregoing does not purport to summarize the entire Lease, but only to highlight some of its more important provisions which directly affect Unit Owners. A copy of the Lease is on file at the office of the Selling Agent for examination by prospective purchasers and their attorneys. Purchasers and their attorneys are urged to review the Lease.

## DESCRIPTION OF PROPERTY AND IMPROVEMENTS

### Construction of the Building

The Land is situated on a parcel bounded by Vesey Place, North End Avenue, Murray Street and River Terrace in the Borough of Manhattan.

The project is a new construction project. The Property is currently vacant land. Further, the Building will be constructed as a "Green Building." Green building or environmental building is an approach to building that seeks to reduce the impact on our environment resulting from the things we build and the way we build them. This means that the Building is designed to reduce waste, use more energy efficient and earth friendly materials and as a result the Unit Owner will enjoy the benefits of healthier and safer indoor environments. Elements of a Green Building include:

- Energy Efficiency and Renewable Energy;
- Water Stewardship;
- Environmentally Preferable Building Materials and Specifications;
- Waste Reduction;
- Indoor Environment; and
- Smart Growth and Sustainable Development.

Green or sustainable building is the practice of creating healthier and more resource-efficient models of construction, renovation, operation, maintenance, and demolition. Research and experience increasingly demonstrate that when buildings are designed and operated with their lifecycle impacts in mind, they can provide great environmental, economic, and social benefits.

The Building contains a Commercial Section, consisting of the Commercial Units, the Commercial Common Elements and the Commercial Limited Common Elements and a Residential Section consisting of the Residential Units, the Residential Common Elements and Residential Limited Common Elements.

The Building, including the individual Units therein, will be substantially completed in accordance with the Plans and Specifications and all applicable zoning and building laws, regulations, codes and other government requirements. No Asbestos Containing Material will be present in insulating or fire-proofing material contained in the Building. Following completion of the Building, Temporary Certificates of Occupancy for individual Units and the Building and/or a permanent Certificate of Occupancy for the Units and the Building will be issued by the Department of Buildings of the City of New York and copies of the Plans and Specifications for the Building will be filed with the Department of Buildings of the City of New York.

Under the present construction schedule it is anticipated that, except for finishing work to stairways, hallways and other areas of the Building which are not intended for the exclusive use of any particular Unit Owner and work, if any, which Sponsor agrees to perform in individual Residential Units at the request of Purchasers or Residential Unit Owners, the Residential Units will

be substantially completed by March, 2008 and a first Temporary Certificate of Occupancy with respect to portions of the Building will be obtained in or about November, 2007 both subject to Unavoidable Delays. Sponsor does not, however, warrant or guarantee the foregoing completion or occupancy dates for the Building. The first Temporary Certificate of Occupancy may issue for some but not all of the Residential Units and Sponsor may complete construction of certain Residential Units before others. As more fully set forth in the Lease, Sponsor is only obligated to complete the structural components of the World Hunger Education Center Unit, the Poets House Unit and the Public Library Unit (i.e., core and shell) and is not obligated to complete the World Hunger Education Center Unit, the Poets House Unit and the Public Library Unit. Please refer to the Section of the Plan entitled "Commercial Units" for further details regarding the Garage Unit and the Café Unit.

Sponsor has engaged Ismael Levy Architects P.C. ("Sponsor's Architect") as architects for the Building, DiSimone Consulting Engineers, as the structural engineers for the Building and Cosentini Associates, as the mechanical, electrical and plumbing engineers for the Building.

In accordance with the terms of the Lease and to secure its obligations with respect to the construction of the Building, Sponsor will deposit with Landlord, a clean irrevocable letter of credit (the "Design/Construction Period Letter of Credit") drawn in favor of Landlord, having a term of not less than one (1) year, payable in United States dollars upon presentation of sight draft. The initial amount of the Design/Construction Period Letter of Credit shall be \$2,687,000. The Design/Construction Period Letter of Credit or any proceeds thereof shall be returned to Sponsor on the date of Completion of the Building provided no default under the Lease exists.

Sponsor reserves the right to amend or modify the Plans and Specifications in any way not material to this offering or in a manner disclosed in this offering, including, without limitation, changing materials, appliances, equipment, fixtures and other construction and design details set forth therein or in the "Description of Property" set forth in Part II of the Plan and to substitute in their place similar materials, appliances, equipment and/or fixtures of substantially equal or better quality, provided that any necessary approval of any Governmental Authority having jurisdiction thereover is timely obtained. Any or all of the foregoing shall give rise to no right of rescission on the part of any Purchaser and may be made without prior notice or amendment to the Plan.

### **Residential Units**

Subject to the rights of Sponsor and its designee to change the number of Residential Units, there will be a total of 264 Residential Units situated on floors 2 through 32 of the Building. There is no 13th Floor in the Building. Detailed descriptions of the Residential Units including a finish schedule are set forth in the Declaration and in the "Description of Property" in Part II of the Plan. See also the Section entitled "Changes in Prices and Units." Please refer to Schedule A, "Prices of Units and Related Information" for further details.

Except as otherwise agreed by the parties, the Residential Units will be delivered to Purchasers with a finish coat of paint. Each Purchaser will be obligated to do all other painting and

decorating of the Residential Unit at such Unit Owner's own cost and expense. Any special work which a Purchaser desires for a Residential Unit prior to Closing shall only be performed following Sponsor's prior written consent thereto and Sponsor's designation or approval of all contractors and suppliers in connection therewith, which consent and approval shall be within the sole discretion of Sponsor.

Included in the sale of each Residential Unit are the following: refrigerator/freezer, kitchen cabinets, cooktop and oven, dishwasher, washing machine and dryer and individually controlled heating and cooling units. The manufacturer, model number and specifications for the foregoing appliances and equipment are set forth in the "Description of Property" As more fully set forth under the Section entitled "Description of Property and Improvements—Construction of the Building," these fixtures, appliances and equipment are subject to change by Sponsor. Sponsor may negotiate to make modifications or changes in any Residential Unit or to do special work therein or to provide different or additional appliances, equipment, finishings or decorations, provided that Sponsor shall not be bound to do so unless agreed to by Sponsor in a written instrument which is incorporated as an addendum to the Purchase Agreement.

Sponsor and its designee reserve the right, without prior notice or amendment to the Plan, to use Unsold Residential Units on any floor of the Building as sales and leasing offices and model apartments. In the event Sponsor or its designee, thereafter, elects to sell such Unsold Residential Units, Sponsor or its designee may require the purchaser thereof to purchase all or any of the furniture, furnishings, equipment or decorations therein and pay, in addition to the purchase price for such Unsold Residential Unit, such amounts as Sponsor determines.

A Residential Unit Owner may only use such Unit Owner's Residential Unit for a purpose consistent with the local zoning ordinance, as amended from time to time, any other applicable ordinance or statute, and any regulation of a Governmental Authority including, but not limited to, local building codes and the Multiple Dwelling Law, as such statutes, ordinances and regulations may be amended from time to time, but in no event may a Residential Unit Owner use such Unit Owner's Residential Unit for a use violative of the By-Laws or the Lease.

#### **Resident Manager's Unit**

Residential Unit 2A has been permanently designated as a Resident Manager's Unit in the Building. Janitorial services will be provided for the Building through the Condominium employing a resident manager for the Building who will be provided with an apartment ("Resident Manager's Unit") The Resident Manager's Unit will be acquired on or after the First Unit Closing by the Board of Managers of the Condominium on behalf of all of the Residential Unit Owners and occupied by the Resident Manager. Schedule B, Budget for the First Year of Condominium Operation, includes the cost of providing an apartment for the Resident Manager, the Common Charges, PILOT and utility charges and mortgage payments all of which will be paid by all of the Residential Unit Owners as a Residential Common Expense.



### Terraces

As indicated in Schedule A, Terraces are appurtenant to certain Residential Units and are included in the purchase prices therefor. Terraces are Residential Limited Common Elements. A Residential Unit Owner who has a Terrace appurtenant to such Unit Owner's Residential Unit shall have the exclusive use of same, subject to the right of the Condominium Board to regulate its use, and shall be responsible for all normal maintenance, repairs and replacements thereto. However, the costs and expenses of any structural repairs or repairs or replacements to any Terrace (unless caused by its Residential Unit Owner) shall be charged to all Residential Unit Owners as a Residential Common Expense.

The Condominium Board shall have the right to require a Unit Owner to remove plantings and other installations which have been placed on the Terraces if the Condominium Board determines, in its reasonable discretion, that such plantings, surface coverings or other installations adversely affect the integrity of the roof. The Condominium Board may establish such other rules and regulations it deems necessary to protect the Common Elements and the Units and to insure the integrity and uniform appearance of the Building and the health and safety of the occupants, including, without limitation, the type and quantity of furnishings which can be placed upon Terraces.

### Commercial Units

As more particularly described in the Section of the Plan entitled "Commercial Units," in the Declaration and the "Description of Property" located in Part II of the Plan, the Commercial Section will be situated on portions of the First and Second Floors of the Building and includes the Commercial Units and the Commercial Common Elements. The Commercial Units will be initially comprised of five (5) Units: the Garage Unit, the Café Unit, the World Hunger Education Center Unit, the Poets House Unit, and the Public Library Unit.

The Residential Board will have no right to restrict or limit the method of operation, any uses or appearance of the Commercial Units which are permitted by Law and the Lease. The Commercial Board may adopt rules or approve changes relating solely to the Commercial Units, including rules of operation. No rules affecting the operation of the Commercial Unit may be adopted or modified by the Condominium Board without the consent of the Commercial Board. All or any part of the Garage Unit and Café Unit may be leased or subleased by the Sponsor, all as more fully set forth in the Declaration. Subject to compliance with Law and the Lease, if any, the Garage Unit and Café Unit may each be sold without prior notice. Any such sale or division by Sponsor shall be disclosed in a duly filed amendment to the Plan. (See the Section entitled "Changes in Prices and Units"). The Residential Unit Owners will have no interest in the rents, profits or revenues from the rental or use of any space in the Commercial Units. Notwithstanding anything to the contrary set forth above, the World Hunger Education Center Unit, Poets House Unit and the Public Library Unit cannot be subdivided without the consent of BPCA, which consent may be granted or withheld in the sole and absolute discretion of BPCA.

Sponsor and the operator of the Garage Unit also have an easement to use the sidewalks surrounding portions of the Building for purposes permitted by Law and to the extent permitted under the Lease. In addition to basing charges on Common Interests, the Condominium Board may also make allocations and assessments of General Common Expenses in accordance with submetering, contract allocations and usage (both projected and actual) so long as such allocations are reasonable under the circumstances and are in accordance with applicable provisions of Law.

No representation is made with respect to the continued ownership by Sponsor of all or any portion of the Commercial Units or as to who the tenants or occupants of any portion of the Commercial Units may be at any time or as to the uses to which any portion of the Commercial Units may be put at any time. The use of the Commercial Units may generate noise or other disturbances over which the Residential Unit Owners will have no control.

### **General Common Elements**

The common elements of the Condominium (the "Common Elements") consist of the entire Property, including the Land and all parts of the Building and improvements thereon other than the Residential Units and the Commercial Units. The Common Elements include, but are not limited to, those rooms, areas, corridors, spaces and other parts of the Building and all Facilities (defined below) therein for the common use of the Units and the Unit Owners or which are necessary or convenient for the existence, maintenance or safety of the Property. The Limited Common Elements of the Condominium (the "Limited Common Elements") consist of those Common Elements that serve or benefit exclusively (a) the Residential Units or the Residential Unit Owners (in which event they are called "Residential Common Elements"), (b) one or more but not all of the Residential Units or the Residential Unit Owners (in which event they are called "Residential Limited Common Elements"), (c) the Commercial Units or the Commercial Unit Owners (in which event they are called "Commercial Common Elements"), or (d) one or more but not all of the Commercial Units or the Commercial Unit Owners (in which event they are called "Commercial Limited Common Elements"). The General Common Elements are appurtenant to, serve and benefit each Unit to the extent of such Unit's percentage share of the General Common Elements. The General Common Elements are for the common use of all Unit Owners.

As used in this Offering Plan, the word "Facility" or "Facilities" includes, but is not limited to, the following items (grouped more or less functionally) which are set forth only for purposes of illustrating the broad scope of that term: system, equipment, apparatus, convertor, radiator, heater, convertor, heat exchanger, mechanism, device, machinery, motor, pump, control, tank or tank assembly, insulation, induction unit, condenser, compressor, fan, damper, blower, thermostat, thermometer, coil, vent, sensor, shut-off valve or other valve, gong, panel, receptacle, outlet, relay, alarm, sprinkler head, electric distribution facility, wiring, wireway, switch, switchboard, circuit breaker, transformer, fitting, siamese connection, hose, plumbing fixture, lighting fixture, other fixture, bulb, sign, telephone, meter, meter assembly, scaffolding, piping, line, duct, conduit, cable, riser, main shaft, pit, flue, lock, exhaust shaft, or other hardware, rack, screen, strainer, trap, drain, catch basin, leader, filter, canopy, incinerator, closet, door, railing, coping, step, appurtenance, urn,

basket, mail box, carpeting, tile or other floor covering, wallpaper or other wall covering, tree, shrubbery, flower or other planting and horticulture tub or box.

The Common Elements will remain undivided and no Residential Unit Owner or Commercial Unit Owner or other person will bring or will have the right to bring any action for partition or division thereof except as may be specifically provided for herein and in the By-Laws.

The General Common Elements consist of the following:

(a) The leasehold estate in the Land, including any sidewalks located thereon, and vaults thereunder, together with all easements, rights, privileges and obligations appurtenant thereto; (b) the mechanical room at the Subcellar level; (c) the electrical switchgear room located at the easterly or North End Avenue side of the Ground level of the Building; (d) the Fountain Reservoir and Park Conservatory Room located at the northerly or Murray Street side of the Cellar level of the Building; (e) any of the following: all foundations, footings, columns, girders, floor slabs and ceilings, beams, and supports and interior load bearing walls, (except to the extent included in Sections 8.5 or 8.6 of the Declaration), together with those portions of the exterior walls of the Building beyond the Commercial and Residential Unit side of the glass or concealed block work or concealed structural members of those walls; (g) the rooms and Facilities located as follows: electric room and telecom room, all located on the Cellar level, and the water treatment equipment room, the water tower, water tanks and cooling towers and pump, and related boiler Facilities located on the roofs of the Building; (h) the storm water tank; (i) the entrance and plaza (sometimes referred to as the "Building's Portal") at the southerly or Vesey Place side of the Building, which provides access to Tear Drop Park South; the sidewalks in front of the Building; (j) any vault space at the subcellar or cellar levels which is incorporated as part of the above-described General Common Elements; and (k) any other Facilities in the Building which serve or benefit or are necessary or convenient for the existence, maintenance, operation or safety of all of the Commercial Section and the Residential Section and are not a part of any Unit, Residential Common Elements, Commercial Common Elements or any Limited Common Element.

#### **Residential Common Elements**

The Residential Common Elements consist of the following:

(a) Any of the following: all columns, girders, floor slabs and ceilings, beams, and supports, sheetrocked or masonry walls not within each Unit and interior load bearing walls from above the slab over the First Floor of the Building to the roof (except as otherwise provided as a General Common Element or a Residential Limited Common Element); (b) residential electric meters and panels, electric closets, feeders, risers and Facilities, Residential gas meter and telephone cables serving exclusively the Residential Section; (c) to the extent initially offered by Sponsor (exclusive of upgrades ordered or installed by the Unit Owner), bathroom and dryer exhaust ducts, corridor and Residential Unit supply air ducts, hot water lines supply and return for heating, gas-fired domestic water heating units, water pressure reducing valve system, and all other Facilities in the floor and ceilings serving or benefiting exclusively the Residential Section; (d) CATV riser and all

other Facilities located in the Property serving or benefiting exclusively the Residential Section to the extent that the same are not owned by a third party; (e) the rooms and other Facilities, or parts thereof, the Facilities located therein, including traps, tanks, black water system and room located in the Subcellar and Cellar; pits, pumps and the mechanical room enclosing same, all located at the Subcellar; passenger and service elevators (including their shafts, pits, machinery and Facilities wherever located in the Building and servicing any of the floors of the Building; the mechanical utility and trash and storage rooms, Resident Manager's office and workshop, water meters, lunch room together with the adjacent locker rooms and bathrooms, elevator machine rooms and the bicycle room, all located at the Cellar, the mechanical equipment, mechanical equipment rooms, pump rooms, bulkheads and areas and the elevator machine rooms located on all roofs of the Building; the residential lobbies, mail rooms, concierge stations, any storage/package rooms or half-bathrooms and sitting areas adjacent thereto, the service entrances, service corridors and stairs of the Building; transformer room, electrical switchgear room, all located at the First Floor of the Building; the geothermal well adjacent to the easterly side of the garage ramp at the exterior of the northerly or Murray Street side of the Building and pump room in Cellar; at the Second Floor of the Building, the children's playroom together with its adjacent bathrooms, the fitness center which is also known as the gym/yoga room, the upper residential lobby with its adjacent lounge areas and pantry and bathrooms, the reading area, the lap pool, the dog spa and the residential common roof terrace; at the Second Floor and all floors of the Building above the Second Floor, any trash room, trash chute and storage rooms accessible from the public hallways and corridors; (f) all passages, hallways, stairs and corridors, all mechanical space and all other rooms, areas, spaces and other parts of the Building which are not Residential Units, Residential Limited Common Elements or part of the Commercial Units, Commercial Common Elements, Commercial Limited Common Elements, or General Common Elements; (g) all fire staircases and their landings on all floors of the Building from the Cellar to the roofs of the Building; (h) the windows in the Residential Section (except to the extent that they are part of a Residential Unit, or are included in the Residential Facilities as a Residential Limited Common Element and/or as a Commercial Limited Common Element); (i) the exterior canopies and/or marquees adjacent to the Residential Section; (j) all other Facilities exclusively serving the Residential Section, excluding the Residential Units, the Residential Limited Common Elements, the Commercial Common Elements, the Commercial Limited Common Elements and the General Common Elements, and which serve or benefit or are necessary or convenient for the existence, maintenance, operation or safety of the Residential Section; and (k) notwithstanding anything to the contrary in this Offering Plan, if a Residential Common Element benefits only certain Residential Unit Owners, then the Residential Section's costs of alteration, addition, repair, replacement and restoration thereto shall be borne solely by those Residential Unit Owners who benefit from the Residential Common Element in the proportion that the Common Interest of each benefiting Residential Unit Owner bears to the Common Interests of all benefiting Residential Unit Owners. In addition, except as otherwise provided in Subsection 6.9.2.1 of the By-Laws, such Residential Unit Owners shall be responsible for the normal operation, maintenance, cleaning and/or repair of any such Residential Common Element at their sole cost and expense. A detailed description of the Residential Common Elements is contained in the Declaration.

### **Residential Limited Common Elements**

The Residential Limited Common Elements include those portions of the Building available for the exclusive use of some but not all Residential Unit Owners. At the present time the Residential Limited Common Elements consist of the Terraces including any landscaping, plantings and/or laws thereon, to which one or more Residential Units have exclusive access. Notwithstanding anything to the contrary contained in the By-Laws or this Declaration, the Residential Unit Owner having exclusive access to a Terrace, shall have the exclusive right to use such Residential Limited Common Element and shall be responsible for its normal operation, maintenance and repair at such Residential Owner's sole cost and expense; (b) the fireplace flues, if any, connected to the fireplaces located in certain Residential Units; (c) that portion of equipment, fixtures or Facilities serving or benefiting one Residential Unit, to the extent located within another Unit or within a Common Element to which there is direct and exclusive access from the interior of a Residential Unit. Notwithstanding anything to the contrary contained in the By-Laws or the Declaration, the Residential Unit Owner who is so served or benefited by such Residential Limited Common Element shall have the exclusive right to use such Residential Limited Common Element and shall be responsible for its normal operation, maintenance and repair at such Unit Owner's sole cost and expense; and (d) all other Facilities exclusively serving one or more but not all Residential Units, excluding the Residential Units, the Residential Common Elements, the Commercial Common Elements, the Commercial Limited Common Elements and the General Common Elements, and which serve or benefit or are necessary or convenient for the existence, maintenance, operation or safety of one or more but not all of the Residential Units.

### **Commercial Common Elements**

The Commercial Common Elements consist of the following: (a) all columns, girders, floor slabs and ceilings, beams, and supports and interior load bearing walls located within any Commercial Unit or separating a Commercial Unit from a Residential Unit or a Residential Common Element; (b) wherever located in the Building, the commercial electric meters or submeters, separate cold water meters or submeters, gas meters or submeters and other utility meters or submeters (if any) serving or available for the exclusive use of the Commercial Section; (c) wherever located in the Building, the ductwork and all other HVAC and electric and similar Facilities serving or benefiting exclusively the Commercial Section; (d) all windows in the Commercial Section other than windows which are part of the Commercial Units; (f) all remaining Facilities exclusively serving the Commercial Units, excluding the Commercial Units, the Commercial Limited Common Elements, the Residential Common Elements, the Residential Limited Common Elements and the General Common Elements, which serve or benefit or are necessary or convenient for the existence, maintenance, operation or safety of the Commercial Units; and (g) notwithstanding anything to the contrary in this Offering Plan, if a Commercial Common Element or a General Common Element benefits only certain Commercial Unit Owners, then the Commercial Section's costs of alteration, addition, repair, replacement and restoration thereto (except in connection with a casualty or condemnation) shall be borne solely by those Commercial Unit Owners who benefit from the Commercial Common Element in the proportion that the Common Interest of each benefiting Commercial Unit Owner bears to the Common Interest of all benefiting Commercial Unit Owners.

In addition, except as otherwise provided in the By-Laws, such Commercial Unit Owners shall be responsible for the normal operation, maintenance and repair, including but not limited to the cost of staff necessary for such operation, maintenance and repair, of any such Commercial Limited Common Element at their sole cost and expense.

### **Commercial Limited Common Elements**

The Commercial Limited Common Elements include those portions of the Building, if any, which are available for the exclusive use of the Commercial Unit Owner or, in the event that the Commercial Unit is subdivided, is available for the exclusive use of some but not all of the Commercial Units. The Commercial Limited Common Elements consist of the following: (a) the plaza space (except to the extent that it is part of the Building's Portal) at the southerly or Vesey Place side of the Building appurtenant to the Cafe Unit; (b) the exterior canopies and/or marquees adjacent to, and directly in front of, any individual Commercial Unit; (c) that portion of equipment, fixtures or Facilities serving or benefiting one Commercial Unit, to the extent located within another Unit or within a Common Element or the Residential Section to which there is direct access from the interior of a Commercial Unit over, under and through the Common Elements or the Residential Section. Notwithstanding anything to the contrary contained in the By-Laws or the Declaration, the Commercial Unit Owner who is so served or benefited by such Commercial Limited Common Element shall have the exclusive right to use such Commercial Limited Common Element and shall be responsible for its normal operation, maintenance and repair at such Unit Owner's sole cost and expense; (d) all remaining Facilities exclusively serving the one or more but not all Commercial Units, excluding the Commercial Units, the Commercial Common Elements, the Residential Common Elements, the Residential Limited Common Elements and the General Common Elements, which serve or benefit or are necessary or convenient for the existence, maintenance, operation or safety of one or more but not all Commercial Units; and (e) notwithstanding anything to the contrary in the Offering Plan or the By-Laws, if a Commercial Limited Common Element benefits only certain Commercial Unit Owners, then the Commercial Section's costs of alteration, addition, repair, replacement and restoration thereto (except in connection with a casualty or condemnation) shall be borne solely by those Commercial Unit Owners who benefit from the Commercial Limited Common Element in the proportion that the Common Interest of each benefiting Commercial Unit Owner bears to the Common Interest of all benefiting Commercial Unit Owners. In addition, except as otherwise provided in the By-Laws, such Commercial Unit Owners shall be responsible for the normal operation, maintenance and repair, including but not limited to the cost of staff necessary for such operation, maintenance and repair, of any such Commercial Limited Common Element at their sole cost and expense. The costs of maintaining and operating the Commercial Limited Common Elements shall be borne by the Commercial Unit Owner having exclusive access thereto or utilizing or benefitting from the same.

### **Services and Facilities**

Under present plans, all of the services and facilities described herein will initially be provided and made available to Residential Unit Owners immediately following the First Closing, except as otherwise indicated.

**a. Doorman/Concierge**

It is anticipated that a uniformed doorman and/or concierge will be on duty at the Lobbies located in the West Wing and the South Tower of the Building twenty-four (24) hours a day, seven (7) days a week, to assist those arriving and departing. The doorman's hours of duty may not be provided until title has closed to fifty (50%) percent of the Residential Units; provided, however, that there will be at least one (1) doorman/concierge on duty twenty-four (24) hours a day, seven (7) days a week as of the First Closing.

**b. Elevator Service**

The Building will be provided with seven (7) passenger elevators and one (1) service elevator. The Tower Base of the Building will have two (2) passenger elevators and one (1) service elevator servicing the Cellar and all other levels of the Tower Base. The West Wing of the Building will have two (2) passenger elevators. One will service the Cellar and all other levels of the West Wing and one passenger elevator that will service the first floor and all other levels of the West Wing. The East Wing of the Building will have three (3) passenger elevators. One will service the Cellar and all other levels of the East Wing, one will service the first floor and all other levels of the East Wing and one will only service the Cellar and first floor of the East Wing.

**c. Cable Television Service**

A cable television system will be available for the use of the Residential Unit Owners. The charges for primary connections and subsequent monthly fees related to the service will be determined by, and payable directly to the cable company. Additional cable service (Home Box Office or Showtime) will also be available from the cable company for an additional charge on the same basis. Inasmuch as the wiring of the Building may be delayed until a certain percentage of the Residential Units are occupied, Sponsor makes no representation that cable television service will be available to any Residential Unit Owner upon its initial occupancy of a Residential Unit.

**d. Electrical Systems and Telephone Service**

Electrical service will be provided to Residential Unit Owners and Commercial Unit Owners by a Con Edison master meter with submeters for each Residential Unit to be billed to each Unit Owner by a third-party vendor. Each Residential Unit will have an electric washer and dryer. Electricity consumed in the Common Elements of the Building will be collectively metered and the cost thereof shall be a Residential Common Expense. Local and long distance telephone service will be provided by a telephone service provider. Each Residential Unit will be prewired with telephone/data/CATV telephone jacks and a special two-line telephone (at such Unit Owner's expense) which will permit the telephone to be used both as a building intercom and as a telephone.

e. Water Service

Water will be supplied through one or more domestic water services connecting the New York City water mains to the Building. A common meter or meters shall measure all water consumption in the residential portions of the Building and the cost thereof shall be a Residential Common Expense. Gas consumption in the residential portion of the Building will be collectively metered for heating, domestic hot water and cooking and the cost thereof shall also be a Residential Common Expense. The Commercial Units shall be separately metered for water consumption and gas consumption and the cost thereof shall be the sole responsibility of the individual Commercial Unit Owners.

f. Heating Service and Air Conditioning

Space Heating will be provided by four (4) gas fired low-pressure, hot water boilers. The boilers will provide hot water to hot water exchangers and to hot water heaters. Hot water will be distributed to the various areas by a two pipe distribution system. Heat will be provided to the Residential Units through the condenser water heat pump circulating loop. Domestic hot water will be provided by duplex gas fired heaters for each zone. Domestic hot water heaters are located in cellar and roof mechanical rooms.

Common lobbies and entrances to the Building from the street will be heated by water source heat pump units with hot water reheat coils and/or fan forced hot water cabinet heaters. Common Elements above the first floor such as the tops of stairwells and exits to the roof will be heated with electric resistance type heaters or fan forced hot water unit heaters or cabinet heaters.

The Commercial Units will be provided with valved metered or submetered Building heating water for heating. Each metered or submetered section shall connect to valved outlets which may be used by the individual Commercial Unit Owners to install their individually owned heating systems which will be compatible to the residential systems. The Commercial Unit Owners will also be required to install their own individual systems to provide any other hot water in the Commercial Units.

Air-conditioning of the individual Residential Units is provided by water-cooled packaged units and water source heat pump systems. Cooling of the Commercial Units shall be provided by tenant owned air handling units which will be compatible with the residential systems. Cooled water from the same roof-mounted gas-fired chiller/heater system will be distributed to the individual systems installed in each Residential Unit and each Commercial Unit. The cost of this chilled water will be a Common Expense of all Unit Owners.

Separate package water-cooled or air cooled HVAC units or water source heat pumps will be provided for main entrance lobby and miscellaneous areas such as the elevator machine rooms, telephone rooms, etc. Cooling and heating of corridor ventilation air will be provided by packaged, water cooled units with hot water heating coils or gas-fired, air-cooled, rooftop air conditioning units as indicated on drawings. Heating and cooling of the main lobby will be provided with condenser water from a geothermal system that is provided with plate frame exchangers and heat exchangers to cool and heat the closed loop for the main lobby.



**g. Mail**

All incoming mail will be delivered by the United States Postal Service directly to the individual mail boxes in the Lobbies located in the West Wing and the South Tower of the Building.

**h. Laundry**

Each Residential Unit will contain a washer and dryer. There is a separate laundry room servicing the Residential Units located in the Cellar.

**i. Refuse Disposal**

There will be three (3) refuse chutes (one for each wing of the Building) serving the Residential Units leading directly to the trash room located in the Cellar.

**j. Residential Amenities**

There will be a Children's Playroom, reading area, lounge area, lap pool, dog spa and Fitness Center (the "Residential Amenities") available for the use of Residential Unit Owners. The Residential Amenities are located on the second floor of the Building.

**k. Public Open Space**

This area, located on the second floor of the East Wing of the Building facing Teardrop Park, as designated on the site plan set forth in Part II of the Plan, includes seating and will be available for the use of Unit Owners and the general public, subject to such rules and regulations as may be promulgated from time to time by the Condominium Board.

**General**

All determinations with respect to the continuance of any of the foregoing services, if initially made available, will be made by the Residential Board or the Condominium Board. The Condominium Board will be controlled by the Sponsor for as long as Sponsor control the Residential Board: The Residential Board will be controlled by Sponsor for the period ending the later of (i) any meeting of Residential Unit Owners at which the votes cast for Sponsor's nominees do not constitute a majority of the votes cast at such meeting or (ii) five (5) years after the First Closing as more fully described in the Section of the Plan entitled "Control by Sponsor." Please refer to the Description of the Property set forth in its entirety in Part II of the Plan for further details regarding services and facilities at the Property.

Neither Sponsor, the Managing Agent nor the Boards will in any event be liable for the availability, interruption, discontinuance or quality of any of the foregoing services, including, but not limited to, any services provided by any outside company or person other than Building

personnel, or for any injury to person or damage to property resulting from any act or omission of such company or persons or their employees or agents, except to the extent that any such injury to person or damage to property occurs as a result of the negligence of Sponsor, the Managing Agent or any of the Boards, as the case may be.

### **Security Procedures**

The Condominium Board is vested with the responsibility of devising and carrying out security procedures with respect to the Condominium including the Residential Section. Such procedures may be adopted and from time to time changed by the Condominium Board as the Condominium Board, in its discretion, determines to be appropriate to secure the Condominium including, without limitation, the Residential Section. It is anticipated that the security procedures will be as follows:

#### **a. Entrances and Elevators**

A doorman will supervise all admissions to the Residential Lobbies located in the West Wing and the South Tower of the Building. Entrance doors may be locked from midnight to approximately 7:00 AM. Visitors will be admitted to the Residential Section elevators by the doorman when authorized by the occupant of the specific Residential Unit that they wish to visit. All elevators in the Residential Section will be equipped with a two-way communication facility connected to the station and an alarm signal.

#### **b. Intercom System**

All Residential Units will be wired for an intercom facility through the telephone system providing direct communication from the Residential Unit to the concierge station and to the front door.

#### **c. Smoke and Carbon Monoxide Detector**

Smoke and carbon monoxide detectors shall be provided in each Residential Unit in compliance with applicable codes. It will be responsibility of each individual Residential Unit Owner to test and maintain the smoke and carbon monoxide detectors located in such Unit Owner's Unit.

No representation or warranty is made and no assurance is given that the security systems and procedures of the Residential Section and of the Condominium will prevent personal injury or damage to or loss of personal property. While Unsold Residential Units are being offered for sale or lease by Sponsor or its designees there will be a greater number of visitors to the Residential Section than would otherwise be the case. No representation or warranty is made and no assurance is given as to when such selling or leasing activity will terminate. Neither Sponsor or its designee nor the Managing Agent shall be liable or responsible for any personal injury or for any loss or damage to personal property which may result from the failure of the Residential Section's or the Condominium's security systems and procedures, including, without limitation, those procedures

with regard to any delivery of packages, provided that any such failure is not caused by the negligence of Sponsor or its designees, the Managing Agent or their respective agents.

Please refer to the Description of Property set forth in its entirety in Part II of the Plan for further details regarding security procedures.